

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE STATE OF NEW YORK and THE CITY
OF NEW YORK,

Plaintiffs,

-v-

UNITED PARCEL SERVICE, INC.,
Defendant.

15 Civ. 1136 (KBF)

ECF CASE

[PROPOSED] JOINT PRETRIAL ORDER

Pursuant to Rule 4 of the Court's individual rules of practice, Plaintiffs The State of New York and The City of New York ("Plaintiffs") and Defendant United Parcel Service, Inc. ("UPS") jointly submit this proposed pre-trial order.

I. The full caption of the action:

The full caption of the action is set forth above.

II. Counsel for the parties:

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III. The number of trial days:

Court has assigned eight trial days.

IV. Jointly agreed stipulations or statements of fact or law:

The parties to this action stipulate to the following facts and legal conclusions:

1. Defendant United Parcel Service, Inc. (“UPS”) is a corporation, organized and existing under the laws of the State of Delaware, with its principal place of business located in Atlanta, Georgia.

2. All bates-stamped documents produced by UPS in discovery, with bates-stamps beginning UPS, are authentic within the meaning of Federal Rule of Evidence 901. This does not include any document produced by third parties in this litigation that may have used a UPS prefix in their bates-stamps.

3. All bates-stamped documents produced by Plaintiffs in discovery, with bates-stamps beginning with NYS, NYUPS, or NYCUPS, with the exception of documents produced to Plaintiffs by third parties even if they were re-produced by Plaintiffs, are authentic within the meaning of Federal Rule of Evidence 901. The shippers at issue identified in Exhibit A hereto were assigned the corresponding account numbers listed in Exhibit A by UPS for use by those shippers in conducting business with UPS, with the exception of 7GT-1SUF which UPS has not located in its account databases. Furthermore, some accounts listed on Exhibit A had no shipment activity (i.e., the account was not used), and other accounts had no shipment activity in the timeframe at issue in this lawsuit. Pursuant to the August 3, 2016 Stipulation & Order, the shippers listed on Exhibit A are the specific shippers and account numbers that Plaintiffs will put

at issue for trial, and Plaintiffs are not seeking recovery at trial on any account number not listed on Exhibit A. The parties do not stipulate to any allegation of affiliation between any shippers listed on Exhibit A.

V. Witness testimony:

Witness¹	Live/ Designation	Estimated Length of Direct²	Estimated Length of Cross	Estimated Length of Redirect
Plaintiffs' Witnesses				
Angell, Sonia	Live	Declaration	30 mins	20 mins
Bell, Ronald*	Live	30 mins	20 mins	10 mins
Bergal, Mitchell*	Live	30 mins	30 mins	10 mins
Bess, Brian*	Live	20 mins	15 mins	5 mins
Christ, Philip	Live	75 mins	60 mins	30 mins
Cook, Brad	Live	Declaration	165 mins	120 mins
DelBello, Richard	Live	Declaration	60 mins	45 mins
Erath, Dr. Christopher	Live	Declaration	50 mins	25 mins
Fink, Gerard	Live	Declaration	120 mins	90 mins
Guarino, Vincent	Live	Declaration	30 mins	25 mins
Harris, Wayne*	Live	20 mins	15 mins	5 mins
Hart, Ray*	Live	30 mins	30 mins	10 mins
Jacobs, Rosalie*	Live	45 mins	30 mins	15 mins
Keith, Ryan	Live	Declaration	45 mins	35 mins
Kirk, Clyde*	Live	20 mins	20 mins	5 mins
Kokeas, Maureen	Live	Declaration	20 mins	20 mins
Lehmann, Susan*	Live	15 mins	15 mins	5 mins
McDowell, Judson Timothy	Live	45 mins	30 mins	10 mins
Napieralska, Katarzyna*	Live	15 mins	15 mins	5 mins
Niemi, Derek	Live	Declaration	45 mins	45 mins
Oliver, Robert	Live	60 mins	30 mins	15 mins
Quinn, Denis*	Live	15 mins	15 mins	5 mins
Schermerhorn, Maria*	Live	15 mins	15 mins	5 mins
Szelagowski, Matthew	Live	45 mins	30 mins	15 mins
Talbot, Steven	Live	Declaration	60 mins	30 mins

¹ Witnesses with * indicate those witnesses subject to UPS's August 16, 2016 motion to strike. (ECF 335). Plaintiffs intend to move the Court for permission over UPS's objection to substitute Mitchell Bergal for another witness (Robert Oldro) who was also subject to UPS's August 16, 2016 motion to strike.

² The live witness examination times reflected herein are estimates, and UPS respectfully maintains that it is entitled to 50% of the total trial time allotted to the parties, as set forth in its August 16, 2016 letter motion (ECF 335).

Witness¹	Live/ Designation	Estimated Length of Direct²	Estimated Length of Cross	Estimated Length of Redirect
Ward, Roger*	Live	15 mins	15 mins	5 mins
Watkins, Jr. Jesse*	Live	20 mins	15 mins	5 mins
Bankoski, Douglas	Designation	N/A	N/A	
Cintron, Louis	Designation	N/A	N/A	
Haseley, Jolene M.	Designation	N/A	N/A	
Jarvis, Donald	Designation	N/A	N/A	
Logan, Ronald	Designation	N/A	N/A	
Potter, Lewis	Designation	N/A	N/A	
Rohr, Gregory James	Designation	N/A	N/A	
Sheridan, Candace	Designation	N/A	N/A	
Wheaton, Wayne	Designation	N/A	N/A	
Defendant's Witnesses				
Azam, Mohammad	Live	Declaration	20 mins	30 mins
Blauvelt, Debra	Live	Declaration	20 mins	15 mins
Boone, Wendy	Live	20 mins	30 mins	20 mins
Della Serra, Carmine	Live	Declaration	30 mins	20 mins
Delman, Farrell	Live	Declaration	45 mins	40 mins
Loewenson, Carl H., Jr.	Live	Declaration	20 mins	15 mins
Nevo, Aviv	Live	Declaration	45 mins	45 mins
Palombaro, Jeff	Live	Declaration	45 mins	30 mins
Puleo, Jennifer	Live	Declaration	20 mins	15 mins
Sabry, Faten	Live	Declaration	20 mins	15 mins
Shea, Mike	Live	Declaration	20 mins	15 mins
Terranova, Jim	Live	Declaration	45 mins	30 mins
Van Liere, Kent	Live	Declaration	20 mins	15 mins
Woods, Don	Live	Declaration	20 mins	15 mins
Connolly, John	Designation	N/A	N/A	
Ernst, Richard	Designation	N/A	N/A	
Grayson, James	Designation	N/A	N/A	
Jerry, Michael	Designation	N/A	N/A	
Marsh, Roy	Designation	N/A	N/A	
Monell, Julio	Designation	N/A	N/A	
Nocenti, David	Designation	N/A	N/A	
Total Time:		2895 minutes (48 hours 10 minutes)		

VI. Deposition designations:

Plaintiffs' deposition designations are attached hereto as Exhibit 1.

Defendant's deposition designations are attached hereto as Exhibit 2.

VII. Trial exhibits:

Plaintiffs' trial exhibit list is attached hereto as Exhibit 3.

Defendant's trial exhibit list is attached hereto as Exhibit 4.

VIII. Proposed findings of fact and conclusions of Law:

Plaintiffs' proposed findings of fact and conclusions of law are Exhibit 5.

Defendant's proposed findings of fact and conclusions of law are Exhibit 6.

Parties will file their respective findings of fact and conclusions of law on September 9, 5:00 pm per court's order (ECF No. 388).

IX. Declarations of direct testimony:

Plaintiffs' declarations of direct testimony are attached hereto as:

Exhibit 7 – Dr. Sonia Angell

Exhibit 8 – Dr. Christopher Erath

Exhibit 9 – Maureen Kokeas

Defendant's declarations of direct testimony are attached hereto as:

Exhibit 10 – Mohammad Azam

Exhibit 11 – Debra Blauvelt

Exhibit 12 – Brad Cook

Exhibit 13 – Richard DelBello

Exhibit 14 – Carmine Della Serra

Exhibit 15 – Farrell Delman

Exhibit 16 – Gerard Fink

Exhibit 17 – Vincent Guarino

Exhibit 18 – Ryan Keith

Exhibit 19 – Carl Loewenson, Jr.

Exhibit 20 – Aviv Nevo

Exhibit 21 – Derrick Niemi

Exhibit 22 – Jeffrey Palombaro

Exhibit 23 – Jennifer Puleo

Exhibit 24 – Faten Sabry

Exhibit 25 – Michael Shea

Exhibit 26 – Steve Talbot

Exhibit 27 – James Terranova

Exhibit 28 – Kent D. Van Liere

Exhibit 29 – Donald J. Woods

Respectfully submitted,

Dated: New York, New York
September 6, 2016

By: /s/ John Oleske

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By: /s/ Carrie H. Cohen

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